

What is Negotiable Instruments

- ❖ Negotiable Instruments are governed by the Negotiable Instruments Act 1881, which came in to force on 1st March 1882.
- ❖ Section 13 of The Negotiable Instruments Act 1881 defines Negotiable Instruments as - A 'negotiable instrument' means a promissory note, bill of exchange or cheque payable either to order or to bearer.
- ❖ The word 'negotiable' means transferable from one person to another and the term 'instrument' means 'any written document by which a right is created in favour of some person'. Thus, the negotiable instrument is a document by which rights vested in a person can be transferred to another person in accordance with the provisions of Negotiable Instruments Act, 1881.
- ❖ The main object of the Negotiable Instruments Act is to legalise the system by which instruments contemplated by it could pass from hand to hand by negotiation like any other goods. The purpose of the Act was to present an orderly and authoritative statement of leading rules of law relating to the negotiable instruments To achieve the objective of the Act, the Legislature thought it proper to make provision in the Act for conferring certain privileges to the mercantile instruments contemplated under it and provide special procedure in case the obligation under the instrument was not discharged.

Amendment , 1988

- ❖ Chapter XVII containing Section 138 to 142 were inserted by Banking, Public Financial Institutions and Negotiable Instruments laws (Amendment) Act, 1988.
- ❖ The said amendment was introduced with the aim of inculcating confidence in the efficacy of banking operations and giving credibility to negotiable instruments employed in business transactions. If a party issues a cheque as a mode of deferred payment and the payee of the cheque accepts the same on faith that he will get his payment on due date, then he should not suffer on account of non- payment.

Purpose and object of the Amendment.

- ❖ The object of this amendment are as follows:
- ❖ (a) to regulate the growing business, trade, commerce and Industrial activities.
- ❖ (b) to promote greater vigilance in financial matter.
- ❖ (c) to safeguard the faith of creditors in drawer of cheque.

- ❖ The Hon'ble Supreme Court in the matter of *Modi Cements Ltd. v. Kuchil Kumar Nandi, (1998) 3 SCC 249*, observed that "The object of Chapter XVII, containing Sections 138 to 142, is to promote the efficacy of banking operations and to ensure credibility in transacting business through cheques."

Ingredient of liability under Section 138

- ❖ The ingredient of the offence under section 138 were stated by the Supreme Court in the case of *Kusum Ingots & Alloys Ltd [AIR 2000 SC 954]*
- ❖ A person must have drawn a cheque on an account maintained by him in the bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability.
- ❖ That cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier.
- ❖ That cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank.
- ❖ The payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque unpaid.
- ❖ The drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

What constitutes a Valid Notice

- ❖ The notice should specifically mention that the cheque is dishonored by the banker of the drawer on account of insufficient fund in the account of the drawer.
- ❖ The notice should specify date, number of the cheque, amount of cheque, name of bank on which it is drawn. The notice must also mention date of deposit of the cheque in payee's bank account for collection and that the cheque is dishonored for reasons of insufficient amount.
- ❖ The notice should make specific demand of the amount of the cheque payable within 15 days of the receipt of the notice.

Cases under Section-138

- ❖ **Re: Purpose and object of the Act.**

In case of Dalmia Cement (Bharat) Ltd. vs. Galaxy Traders & Agencies Ltd. (2001 6 SCC 463)

The Apex Court in this case held that the purpose and object of this Act is to enhance the acceptability of cheques by making its drawer liable to penalties if cheque bounces..

- ❖ **Re: Purpose is to promote efficacy of banking system.**

In case of NEPC Micon Ltd. (AIR 1999 SC 1952)

The apex court has observed that the legislative purpose of Section 138 is to promote efficacy of banking and ensuring the cheques are not dishonoured in transaction and credibility is maintained.

Contd...

❖ **Re: Intention for enacting Section 138.**

In case of Ziavulla Hussain vs. K. Karunakaran 2018 Cri LJ 1244 (Mad)

The court has held that the intention of the legislature in enacting Section 138 is to see that the drawer is made to pay the amount to payee by giving a criminal colour to a civil nature offence.

❖ **Re: Scope of Section 138.**

In case of Anil Gupta vs. Star India Pvt. Ltd. AIR 2014 SC 3078

The apex court has held that the drawer of cheque alone falls within the scope of Section 138, whether human being or a body corporate or even a firm.

Application of Section 138

❖ **Re: Application of Section 138**

In case of Vinodkumar Vs. Prem Pal III (2013 BC 520 (Del)

It was held that where the evidence showed that the criminal prosecution under Section 138 of the Act was neither for recovery of money nor for enforcement of any security, Section 138 of the Act would not apply.

❖ **Re: Provisions of act are mandatory.**

In case of Arunodaya MMKSS Ltd. vs. State of Maharashtra III (2013) BC 295 (P&H)

It was held that the provisions of Section 138(c) of the Negotiable Instruments Act is mandatory and no directory in nature.

Contd.

- ❖ **Re: Pay order is also a cheque.**

In case of Punjab and Sind Bank vs. Vinkar Sahakari Bank Ltd. 2002 Cri LJ 93(SC)

The court has held that a 'pay order' is a cheque within the meaning of Section 138 of the Act and on dishonour of a 'pay order' Section 138 proceedings are competent.

- ❖ **Re: Cheque given as security.**

**In case of Shubra Mitra vs. Dipankar Saha
2012 (2) DCR 461 (Cal)**

Where it was admitted in defence adduced by both complainant and witness that cheque in question was not issued for repayment of loan but it was issued as a security, the provisions of Section 138 of Act would not apply.

Contd.

- ❖ **Re: Difference between commission and prosecution.**

In case of Cabral and Co. vs. William Rosario Fernandes 2007 Cri.LJ 159

It is opined that in criminal law, commission of offence is one thing and prosecution is quite another. Commission of offence is governed by Section 138 and prosecution is governed by Section 142 of the Act.

- ❖ **Re: Opportunity of payment shall be given to accused.**

In case of Dashrath Rupsingh Rathod vs. State of Maharashtra 2014 Cri LJ. 4350 (SC)

The apex court has held that the scheme of giving opportunity to drawer of cheque to pay up amount before permitting his prosecution, no matter whether offence is complete, is unique to Section 138.

Presumption

❖ **Re: Presumption when cheque is signed by drawer**

In case of Unnikrishanan (T.N) vs. Ramakutty (T.K) (2006 Cri. LJ 4700 Ker)

It was held that when the cheque is admittedly signed by the drawer irrespective of fact that the details in cheque had been filled up by any other person cannot get absolved of the liability under Section 138 of the Act unless he prove that the cheque was not given against a discharge of liability.

❖ **Re: Presumption to debt**

In case of Beena (K.N) vs. Muniyappan (2001 Cri LJ 4745 (SC))

It was held that in complaints under Section 138, the court has to presume that the cheque had been issued for a debt or liability. The presumption is rebuttable and the burden of proving that cheque is not issued for debt or liability is on to the accused and he has to prove in trail by leading cogent evidence.

Legal Debt

- ❖ **Re: Legal debt is must.**

**In case of Mohan Krishna (B) vs. Union of India
(1996 Cri LJ 636 (AP))**

The court has held that where a cheque is not issued for the purpose of discharge of any debt or other liability, the maker of the cheque is not liable for prosecution. For Eg. Cheque given as a gift or present.

- ❖ **Re: Cheque must be issued towards legal debt.**

In case of Soma Dharmam vs. S. Natarajan I (2014 BC 719 (Mad)).

It was held that the cheque in question must have been issued in respect of legally enforceable debt or other liability for the purpose of invoking Section 138 of the Act.

Legal Debt

- ❖ **Re: Act not applicable if contract is not enforceable**

In case of Mohd Faizal Khan vs. State of Jharkhand IV (2012 BC 366 (Jhar))

It was held that a complaint under Section 138 of the Act cannot be maintained if the contract is not enforceable.

- ❖ **Re: Act not applicable on future liabilities**

In case of Satinder Kumar vs. Gurvinder Singh 2011 (1) DCR 97 (P&H)

It was held that in order to launch prosecution in respect of uncertain future liabilities, Section 138 of the Act would not be applicable.

Legal Debt

❖ **Re: Claim illegal and against public policy**

**In case of Sunitha (B) vs. State of Telangana
2018 Cri LJ 715 (SC)**

The court has quashed the proceedings under Section 138 on finding the claim of the payee against public policy and being an act of professional misconduct and hence, proceedings against the drawer were abuse of process of law.

Presentation of Cheque

- ❖ **Re: Cheque to be presented within Limitation**

In case of Shri Ishar Alloys Steel Ltd. vs. Jayaswal's NECO Ltd. 2001 Cri LJ 1250.

The apex court has held that non presentation of cheque to the drawee bank within the period specified in the section would absolve person issuing the cheque of his criminal liability under Section 138 of the Act, who otherwise would be liable to prosecution.

- ❖ **Re: Cheque can be presented more than once.**

In case of Sadanandan Bhadran vs. Madhavan Sunil Kumar 1998 Cri LJ 4066 (SC)

The court has held that Section 138 does not put any embargo upon the payee to successively present a dishonoured cheque during the period of its validity. Cause of action arises only when the notice is served on each presentation of cheque and on dishonour fresh right arises. Once the notice is given the right of the payee is forfeited to further present the cheque.

Reason of Dishonour

- ❖ **Re: Reason for dishonour not relevant.**

**In case of Modi Cements Ltd. Vs. Shri Kuchil Kumar Nandi
(1998 (2) SC 198)**

It was held that reasons for dishonour of cheques are wholly irrelevant and cannot be taken into account. Once the cheque is dishonoured, presumption under Section 139 must follow and the drawer can be held under Section 138.

- ❖ **Re: Cheque dishonoured on structural defect, no offence.**

**In case of Babulal Nainmal Jain vs. Khumji Ratanshi Dedhia
(1998 Cri LJ 4750 (Bom))**

It was held that if the cheque is returned on account of structural defect for eg. Defect in its form, want of signature, the same will not amount to offence under Section 138. Refusal to replace the cheque will also not amount to offence.

Reason for Dishonour

❖ **Re: Cheque Returned as 'Refer to drawer'**

**In the case of Voltas Ltd. vs. Hiralal Agarwalla
(1991) (71 Comp Cas 273 (Cal))**

It was held that the remark refer to drawer means that the cheque has been returned for the want of funds and hence it will attract prosecution under Section 138.

❖ **Re: Payment of cheque stopped by drawer.**

**In case of Modi Cement Ltd. vs. Kuchil Kumar Nandi
(AIR 1998 SC 1057)**

It was held by the Supreme Court the stoppage of payment will not preclude the action under Section 138.

Reason for Dishonour

- ❖ **Re: Stop Payment no offence if no debt or liability at the time of presenting the cheque.**

**In case of M.M.T.C Ltd. vs. Medchl Chemicals and Pharma (P) Ltd.
(2002 (1) Crimes 156 SC)**

The Supreme Court has held that if the accused shows that there were sufficient funds in its account to clear the amount of the cheque and the payment was stopped due to valid causes as no existing debt or liability, then offence not made out. Burden of proof on accused.

- ❖ **Re: Bank account closed**

**In the case of NEPC Micon Ltd. vs. Magma Leasing Ltd.
(1999 Cri LJ 2883 (SC))**

It was held by the Supreme Court that the cheques returned with endorsement account closed are covered in Section 138 of the Act. Closing of account is one of the mode by which accused tries to wriggle out of his liability.

Reason for Dishonour

❖ **Re: Dishonour as ‘Exceeds Arrangements’**

**In the case of Bimal Kumar Nopani vs. State of UP
(2006 Cri LJ 2611) (All)**

It was held that two words ‘exceeds arrangement’ and ‘insufficiency of funds’ are same and both denotes that the cheque amount was more than the balance amount and offence under Section 138 made out.

❖ **Re: Cheque reported stolen**

**In the case of Chandran (T.P) vs. Sathyanandan (M.K)
(2000 Cri LJ 3728 (Ker))**

It was held that when it is reported that the cheque is stolen the intention of the drawer is clear, i.e he wants stop payment or dishonour of cheque. Section 138 attracted.

Reason for Dishonour

- ❖ **Re: Dishonour due to alteration in date or signature differs**

In case of Dinesh Harakchand Sankla vs. Kurlon Ltd. (2006) 134 Comp Cas 295 (Kar)

It was held that the cheques shall be issued in a manner that they get cleared. If drawer intentionally tampers with the cheque the cheque will return, and even after service of notice, the amount is not paid, the intention is clear. Hence, 138 will be attracted.

- ❖ **Re: Signature Denied by drawer**

In the case of Goyal (L.C) vs. Suresh Joshi (AIR 1999 SC 2222)

It was held by the apex court that where the drawer denies his signature and pleads that he could not be held responsible unless opinion of handwriting expert was obtained and if the cheques are dishonoured on ground of insufficient funds the plea of forged signature could not be accepted.

Reason for Dishonour

- ❖ **Re: Payment stopped attracts 138.**

In case of HMT Watches Ltd. vs. Abida (M.A) (2015 Cr. LJ 2408 SC)

The apex court has held that in a case of dishonour of cheque by bank with endorsement “payment stopped by the drawer” Section 138 gets attracted and offence would be punishable under it.

- ❖ **Re: Signature mismatch 138 applicable.**

In case of Laxmi Dye chem vs. State of Gujarat (2013 Cr. LJ 3288 (SC))

The apex court has held that where dishonour of cheque was on the ground of mismatch of the signature of drawer, it would attract the penal provisions of Section 138.

Liability of Drawer

❖ **Re: Cheque issued by Authorized Signatory**

**In the case of Mohammed Samdani Basha vs. Syed Issac Basha
(2006) Cri LJ 1586 (Kar)**

In this regard, the position of the law is that, when the cheque is issued by the drawer on behalf of the principal, the principal cannot escape from its liability.

❖ **Re: Vicarious Liability**

**In the case of Ritesh vs. Dhanwantari Urban Co-Op Credit Society Ltd. III
(2013) BC 416 (Bom)**

It was held that the applicant would be vicariously liable to the affairs of the company if he was at the material time responsible to the affairs of the society as Chairman and he was drawer of the cheque.

Liability of Drawer

❖ Re: Cheque issued by mandate holder

In the case of Ravi Chandran (R) vs. Subramanian 2006 (1) MLJ (Cr1) 68 (Mad)

The mandate holder who issues the cheque on behalf of the account holder is not liable to answer the criminal liability under Section 138 of the act as a mandate holder is not accountable to the proceedings under that Section.

Liability of Drawer

❖ **Re: Joint Holder liability**

**In the case of Priyadarshini (R.) vs. LIC Housing Finance Ltd.
(2006) 130 Comp Cas 441 (Mad)**

In this case the cheque was drawn by the husband and his wife being joint holder of the account was also arrayed as an accused. The Court held that wife is not liable for the cheque drawn by the husband.

❖ **Re: Proceedings against guarantor**

**In the case of I.C.D.S Ltd. vs. Beena Shabeer
(2002 Cri LJ 3935 (SC))**

It was held that proceedings under Section 138 are maintainable *vis-à-vis* a guarantor. A cheque issued by guarantor could be said to have been issued for the purpose of discharging debt.

Notice

- ❖ **Re: Issuance of Notice is Mandatory**

In the case of Vinay Devanna Nayak v Ryot Sewa Sahakari Bank (AIR 2008 SC 716)

It was held that issuance of notice as required under clause (b) of proviso to section 138 of the Act is a mandatory one and not a mere formality.

- ❖ **Re: Holder of the cheque has to make demand of payment**

In the case of Arun Chawla vs. State of UP (2010 Cri LJ 723 (All))

It was held that no offence under section 138 of the Act on dishonour of cheque unless the payee or the holder of the cheque makes a demand for payment of the amount of money by giving a notice in writing to the drawer of the cheque within 30 days of the receipt of the information by him from bank regarding the return of the cheque. In absence of such notice dishonour of cheque does not constitute the offence under section 138 of the Act.

Notice

- ❖ **Re: Failure of payment after notice.**

In case of Indira (K.R) vs. Adinarayan AIR 2003 SC 4689

It was held that the last ingredient to complete an offence under Section 138 of the Act is failure of the accused to make payment within 15 days after service of notice.

- ❖ **Re: Notice received unclaimed.**

In case of Joseph Jose vs. Baby (2002 3 KLT 46 (SN))

It was held that sending notice at the correct address of the accused and return of the same with endorsement 'unclaimed' are sufficient for the purpose of due compliance with Section 138(b) of the Act.

Complaint

❖ **Re: Verification of complaint.**

In case of Roy Joseph Creado vs. Sk. Tamisuddin (AIR 2008 (NOC) 1290 (Bom))

It was held that verification of the complaint under Section 200 of CRPC is necessary. The purpose of verification is to determine prima facie truth of allegations made and in order to identify the person who would be liable for perjury if allegations found false.

Complaint

- ❖ **Re: Signature of complainant not necessary**

**In the case of Indra Kr. Patodia vs. Reliance Industries Ltd.
(AIR 2013 SC 426)**

It was held that the complaint of dishonour of cheque need not be signed by complainant. The complaint without signature of complainant is maintainable.

- ❖ **Re: Substitution of complainant.**

In case of Gulf Asphalt Pvt. Ltd. vs. Rao (D.S.K) (2015 Cri LJ 3954 (Guj)

It was held that the substitution of complainant at a later stage would not amount to seeking an amendment in complaint. The business of complainant was changed from proprietary to private limited company during the course of trial. Hence, order substituting private company as complainant is proper.

Complaint

- ❖ **Re: Power of Attorney holder can file complaint.**

In case of Ram Chander Prasad Sharma vs. State of Bihar (AIR 1967 SC 349)

It was held that the power of attorney holder can file complaint. Where the POA holder is in charge of business, aware of the transactions, and complaint is signed by the POA holder, the POA holder can be examined as complainant.

- ❖ **Re: Power of Attorney must have witnessed the transaction.**

In case of A.C Narayanan Vs. State of Maharashtra (AIR 2014 SC 630)

It was held that the power of attorney holder can be deposed and verified on oath to prove the contents of the complaint. The POA holder must have witnessed the transactions as an agent of the payee/holder in due course or must have knowledge regarding the said transactions.

Complaint

- ❖ **Re: Complaint filed by Co-Operative Society**

In case of Om Shakthi SC/ST & Minority Credit Co-Op Society Ltd. vs. Venkatesh (2008 Cr. LJ 998 (Kar))

It was held that where the complainant is co-operative society, the complaint filed by the president of the society should be supported by an authorization or Power of Attorney.

- ❖ **Re: Individual can file complaint on behalf of business concern if he is owner.**

In case of Dassan vs. Ranimol (2002 (3) KLT 781)

It was held that where the cheques stands in the name of business concern and the complainant is not the said business concern, but an individual, the complainant would not be entitled to get the relief prayed unless it is established that the cheque was issued to him and the business concern was owned by him.

Complaint

- ❖ **Re: Authority vide MOA and AOA acceptable to file complaint.**

In case of Menon Ventures vs. Birla 3 M Ltd. (2005) 127 Comp Cas 878 (Karn).

It was held that when the managing director under the MOA and AOA was authorized to file a complaint or suit, the complaint filed by the managing director through the authorized officer was held maintainable.

Complaint

❖ **Re: Complaint by company**

In case of Satish and Co. vs. S.R Traders (1998 Cri LJ 419 (AP))

It was held that an authorized person can sign the complaint on behalf of the company as the company being corporate body breathes through authorized officers and such officer must be a person whose actions would be binding on the company whether he is manager, secretary or on any other designation.

❖ **Re: Complaint by partnership firm**

In case of Polisetty Seetharamanjaneyulu vs. Public Prosecutor, High Court of A.P (2005 Cri LJ 4297 (A.P))

It was held that there is no impediment for a partner of a firm to file the complaint when there was a finding that he was a managing partner of the firm.

Complaint

❖ **Re: Cause of Action**

In case of Mahindra and Mahindra Financial Services Ltd. vs. Nitin III (2012 BC 337 (Bom))

It was held that the part of cause of action would arise at that place where the complainant calls upon the accused to make payment and mentioned in the demand notice and the accused fails to make the payment at that place.

❖ **Re: Cause of Action and Limitation.**

In the case of Galore Packaging India (P) Ltd. vs. Sanjay Shara (2013 (1) LRC 138 (Del))

It was held that the cause of action and limitation for filing a complaint under Section 138 commences with the date of issuance of notice for demand of payment.

Trial of case

- ❖ **Re: 138 Cases to be tried summarily**

In case of Rajesh Agarwal vs. State (2010 (171) DLT 51)

It was held that the cases under Section 138 is to be tried summarily. Summary trial procedure is given under Section 260 to 265 of CRPC.

- ❖ **Re: Re-examination of witness only if necessary.**

In case of Fulchand Shankarji Shende vs. Sandip Sukhdeo Thaokar (2010 Cri. LJ 349 (Bom))

The court has opined that as per Section 326(1) of the Code, if the evidence is recorded by the predecessor of the Magistrate or Judge in part or otherwise, he has to proceed further from that stage and shall not order re-examination of any witness without giving reasons as to why re-examination is necessary.

Trial of Case

- ❖ **Re: Evidence can be recorded in full.**

**In case of Indian Bank Association vs. Union of India
(2014 Cr.LJ 3119 (SC))**

The court has held that where evidence are record in full and not in summary manner, then also the High Court directing fresh recording of evidence is not proper.

- ❖ **Re: Trial can also be summon case nature.**

**In case of Shivaji Sampat Jagtap vs. Rajan Hiralal Arora
(2007 Cri LJ 122) (Bom)**

In this case evidence was not lead in a summary manner and case was not tried in summarily and was in fact a regular summons case. However, this objection of the accused was not held sustainable.

Trial of Case

- ❖ **Re: Right of accused to lead evidence.**

In case of Prakash Seventilal Vora vs. State (2011 Cri LJ 2207 (Bom))

The court has held that the accused has right to set up his defence and to issue summons for examining any witness. However this right is subject to permission being granted by the Magistrate. The Magistrate is empowered to reject any such application under Section 243(2) of CR.PC.

- ❖ **Re: Exclusion of Mens Rea**

**In the case of Modi Cements Ltd. vs. Kuchil Kumar Nandi
(AIR 1998 SC 1057)**

It was held that the elements of *mens rea* has been excluded in the larger public interest to curb the instances of dishonouring of cheques and hence principle of strict liability has been introduced to encourage greater vigilance.

Trial of Case

- ❖ **Re: Directors to be summoned in case accused is company.**

In case of Manju Podar vs. Ashwani Kumar (1996 86 Comp Cas 631 (P&H))

The court has held that the directors of the company can be rightly summoned being directors of the company and whether they were incharge of day to day affairs of company is matter of trial and can be determined only after the evidence are led.

- ❖ **Re: Refusal of accepting payment by complainant.**

In case of Pradeep Chandran vs. Nimmi Velappan (1995 Cri LJ 2768 (Ker))

Where on dishonour of cheque issued by the accused, she disclaimed the liability to pay the cheque but on receiving notice tendered payment of whole amount twice in front of the court but the complainant refused to accept both the times. The accused could not be said to be guilty of offence under Section 138.

Trial of Case

- ❖ **Re: Employees of firm not vicariously liable.**

In case of MM Lal vs. State (NCT of Delhi) II (2013 BC 108 (Del))

It was held that the sole proprietorship firm does not fall within the ambit of Section 141 of the Act. Therefore, employees of the said firm cannot be held vicariously liable for offence committed by firm.

- ❖ **Re: Such person deemed to have committed offence.**

In case of Urmila Kumari vs. Rukmani Devi II (2013 BC 644 (649) (Del))

It was held that ‘such person shall be deemed to have committed an offence’ refers to a person who has drawn the cheque which has been returned unpaid on account of the conditions mentioned under Section 138 of the Act.

Trial of Case

❖ **Re: Cheque issued by Authorized Signatory**

**In the case of Mohammed Samdani Basha vs. Syed Issac Basha (2006)
Cri LJ 1586 (Kar)**

In this regard, the position of the law is that, when the cheque is issued by the drawer on behalf of the principal, the principal cannot escape from its liability.

❖ **Re: Vicarious Liability**

**In the case of Ritesh vs. Dhanwantari Urban Co-Op Credit Society
Ltd. III (2013) BC 416 (Bom)**

It was held that the applicant would be vicariously liable to the affairs of the company if he was at the material time responsible for the affairs of the society as Chairman and he was drawer of the cheque.

Trial of Case

❖ **Re: Dishonour of cheque in pursuance of agreement to sell.**

In the case of Krishna Reddy (B) vs. Syed Hafeex (AIR 2019 SC)

It was held that where the cheque is given in pursuance of agreement to sell, it is well settled that an agreement to sell does not create an interest in property however, payment made in pursuance of such agreement is a payment made in pursuance of duly enforceable debt.

❖ **Re: Blank Cheque**

In the case of Bir Singh vs. Mukesh Kumar (2019 Cri LJ 3227) (SC)

It was held that if a signed blank cheque is voluntarily presented to the payee, towards some payment, the payee may fill up the amount and other particulars. The onus will still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

Trial of Case

❖ **Re: Drawer declared Insolvent**

In case of Bharath N. Mehtha vs. Mansi Finance (Chennai) Ltd. (1999 Cri LJ 2929) (Mad)

It was held that the drawer cannot escape from the criminal liability by putting plea that he has declared insolvent. There is no bar contained in any of the provisions of both the Acts, namely the Negotiable Instruments Act and Insolvency Act from approaching criminal court under Section 138.

❖ **Re: Territorial Jurisdiction**

In the case of Sanjal Makkar vs. Saraswati Industrial Syndicate Ltd. (1999 Cri LJ 1958)

It was held the complaint may be filed in a court within the jurisdiction of which the cheque has been drawn or place where the cheque is presented for collection and where an endorsement about dishonour was made or the place where the cheque was dishonoured.

Trial of Case

❖ **Re: Deficit of Court Fee no defence.**

In case of Shree Maruthi Yarns vs. Sri Ramakrishna Mills (AIR 2008 (NOC) 148 (Mad))

It was held that if the complaint is filed with deficit court fee, the said irregularity can be rectified and accused has no say in the said matter as it will prejudice the accused and the said matter is between the Court and the complainant.

Sentence

- ❖ **Re: Sentence of fine also suffice in certain cases**

**In case of Kaushalya Devi Massand vs. Roopkishore
(2011 Cri LJ 2593 (SC))**

In this case the accused had deposited a sum of Rs. 3,50,000/- against the cheque amounting to Rs. 2,00,000/-. Hence, the court was of the view that sentence of fine only would suffice without awarding any jail sentence.

- ❖ **Re: Imposition of Fine double the cheque amount**

In case of Bhawani vs. Doddarangaiah (DC 2002 Cri LJ 3814 (Kar))

In this case, upon conviction the trial court imposed fine of Rs. 15000/- against the cheque of Rs. 1,50,000/-. The High Court enhanced the amount of fine to twice the amount of Rs. 3,00,000/-.

Sentence

❖ **Re: Sentence reduced on deposit**

In case of Raju vs. State of Maharashtra (2011 (1) Crimes 156 (SC))

In this case the accused had deposited Rs. 4 lakhs amount as directed by the court, and as the accused had faced the prosecution for last 6 years and already had served 39 days of imprisonment, the Supreme Court reduced the sentence to the period already undergone and further compensation of Rs. 1 lakh imposed.

❖ **Re: Suspension of Sentence**

In case of Stanny Felix Pinto vs. Jangid Builders Pvt. Ltd. (2001 Cr LJ 1039 (SC))

The Supreme Court held that while suspending the sentence, it is advisable that the court imposes a condition that a fine part is remitted within a certain period.

Sentence

❖ **Re: Compensation to complainant**

In the case of Pankajbhai Nagjibhai Patel vs. State (AIR 2001 SC 567)

It has been held that in view of the limit of fine as prescribed under Section 29(2), the Magistrate who thinks it fit can compensate the complainant for loss under Section 357(3) of the CRPC. No limit for compensation is prescribed under the said Section.

❖ **Re: Acquittal**

**In the case of Pawan Singhal vs. Gauri Shankar Deora
(2012) 7 LRC 352 (Del)**

The acquittal of an accused was upheld where the complainant could not prove that he was having financial capacity to give loan to the accused as he could not disclose any source of income. The evidence against the accused was contrary to his submission.

Sentence

- ❖ **Re: Release on Probation not possible.**

**In the case of M.V Nalinakshan Vs. M. Rameshan
(2009 Cri LJ 1703 (Ker))**

It was held that it is not expedient to release a person convicted on probation under the Probation of Offenders Act.

- ❖ **Re: Mode of recovery of fine and compensation**

**In the case of Hari Singh vs. Sukhbir Singh (AIR 1988 SC 2127)
and reiterated in the case of Suganthi Suresh Kumar vs.
Jagdeeshan (AIR 2002 SC 681)**

It was held that if the accused fails to pay compensation awarded, the court has provided imposition of default sentence on to the accused.

Lok Adalat

❖ Re: Lok Adalat

**In the case of Subhash Narasappa Mangrule vs.
Sidramappa Jagdevappa
(2009 Cri LJ (NOC) 797 (Bom))**

❖ It is held that section 20 of Legal Services Authorities Act, 1987 empowers Lok Adalat to take cognizance, when both parties jointly makes an application indicating their intention to compromise. Such award of Lok Adalat shall be deemed to be decree of Civil Court and shall be binding on parties and shall not be appealable.

Other remedies

❖ **Re: No bar in filing Civil Suit.**

In case of State of Rajasthan vs. Kalyan Sundaram Cement Industries Ltd. (1996 86 Comp Cas 433) (SC)

The apex court has held that if a person has filed suit for recovery will not preclude the said person to file complaint under Section 138 and 420 of IPC. The pendency of criminal matters would not be an impediment to proceeding with the civil suits.

❖ **Re: Additional Criminal remedy**

In case of Sree Sakthi Paper Mills Ltd. vs. Anjaneya Enterprises (AIR 2008 (NOC) 14 Ker).

It was held that the scheme of provisions contained in new chapter is to primarily provide an additional criminal remedy over and above the civil remedies available under the Act.

Other Remedies

- ❖ **Re: No bar from availing civil remedy**

In case of Raju (G.N) vs. Jaiprakash (B.S) (2006 Cril LJ 820 (Kar)

It was held that mere launching of prosecution or even obtaining conviction under Section 138 of the Act against the accused does not prevent the payee from approaching the Civil Court for recovery of the amount which is legally enforceable.

- ❖ **Re: No bar to invoke Section 420**

**In case of Nagaraj (N.P) vs. State of Karnataka
(2006 129 Comp Cas 474 (Kar)**

It was held that merely because the ingredients of an offence under 138 are attracted, it does not prevent the complainant from lodging FIR under Section 420. The ingredients of two offences are different and thus there is no bar to prosecute a person under Section 420.

Other Remedies

- ❖ **Re: Section 138 and 420 different**

In case of Anta vs. Union of India (1991 (2) KLT 341.

The Kerala High Court held that since offences under Section 420 of IPC and Section 138 are distinct and separate and the ingredients are also different, there is no constitutional bar in prosecuting the offender for the offence punishable under Section 420, inspite of his prosecution and conviction under Section 138.

- ❖ **Re: No violation of Article 20(2)**

Anto (K.S) vs. Union of India (1993 76 Comp Cas 105 (Ker)

It is held that bar under Article 20(2) of Constitution that no person shall be prosecuted twice for same offence cannot be violated by Section 138. Ingredients of Section 138 and Section 420 of IPC are different. In spite of prosecution and conviction under Section 138, there would not be constitutional bar to prosecute under Section 420.

Other Remedies

❖ Re: Section 138 and 420 different

**In case of Anta vs. Union of India
(1991 (2) KLT 341.**

The Kerala High Court held that since offences under Section 420 of IPC and Section 138 are distinct and separate and the ingredients are also different, there is no constitutional bar in prosecuting the offender for the offence punishable under Section 420, inspite of his prosecution and conviction under Section 138.

Presumptions Under Section 118 & 139

- ❖ The presumptions under section 118 are as follows:
- ❖ Consideration: Every negotiable instrument is deemed to have been drawn and accepted, endorsed, negotiated or transferred for consideration.
- ❖ Date: Every negotiable instrument must bear the date on which it is made or drawn.
- ❖ Acceptance: Every Bill of exchange was accepted within a reasonable time after the date mentioned therein and before the date of its maturity.
- ❖ Transfer: Every transfer should be made before the expiry.
- ❖ Order of indorsement: Until the contrary is proved, it shall be presumed that the endorsement appearing upon a negotiable instrument were made in the order in which they appear thereon.
- ❖ Stamp: Unless the contrary is proved, it shall be presumed that a lost promissory note, bill of exchange or cheque was duly stamped.
- ❖ Presumption that the Holder is a Holder in due course: The term 'holder in due course' as defined in s. 9 of the Negotiable Instruments Act means a person who gives consideration.

Contd...

- ❖ The presumption under Section 139 is as under:
- ❖ Section 139: It shall be presumed, unless the contrary is proved that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.
- ❖ Presumption is a 'rebuttable presumption' under section 139 of the act itself since the accused issuing the cheque is at liberty to prove to the contrary; *Laxmi Dyechem Vs. State of Gujarat 2012(9) SLT 54*
- ❖ A rebuttal presumption is created under section 139 that cheque was issued by the drawer in discharge of any debt or liability owned by him to its holder; *Mandavi Co-operative Bank Ltd Vs. Nimesh B. Thakore AIR 2010 SC 1402*

Cases under Section-139

❖ **Re: Presumption is statutory and mandatory**

In the case of Girishbhai Natvarbhai Patel vs. State of Gujarat (2006 Cri LJ 3378 (Guj))

The presumption as envisaged under Section 139 is statutory and mandatory and not discretionary and is created in favour of the complainant and the Court has to presume and proceed on the basis of this presumption unless dislodged by the accused.

❖ **Re: Contents of Advance Intimation for not depositing cheque**

In the case of Montari Industries Ltd. vs. State (1998 Cri LJ 10 (Guj))

The advance intimation not to present the cheque should contain detailed, sufficient and legally tenable reasons otherwise anybody by giving cheque would induce somebody to act on it without making arrangements of funds and the same would encourage dishonesty and will frustrate the object of Section 138.

Contd...

❖ **Re: Dislodging of presumption in favour of complainant**

In the case of Venkatatesulu (B.P) vs. Mani Nayar (K.P) (2001 104 Comp Cas 348 (Kar)

It was held that prosecution evidence which are found to be badly damaging the credibility of the prosecution case, they are sufficient to displace the presumption. Once the presumption is dislodged then heavy burden would lie on the complainant to prove by independent positive evidence.

❖ **Re: Obligatory on court to raise presumption**

In the case of Guten P. Dalal vs. Bratendranath Banerjee (2001 AIR SCW 3861)

It was held by the Supreme Court that it is obligatory on the court to raise the presumption in every case where the factual basis for raising the presumption had been established. It is presumption of law and no discretion is left with the Court. However, the person against whom the said presumption is drawn can rebut the same by proving the contrary.

Contd.

❖ **Re: Effective Rebuttal**

In case of PL Vairavan vs. AL Selva Kumar (2015 Cr LJ 2795 (Mad))

It was held that once the accused prove discharge by cogent evidence he cannot be convicted by relying upon presumption drawn in favour of the complainant.

❖ **Re: Burden of Proof on Accused**

In the case of Joseph Jose vs. J. Baby (2002 Cri LJ 4392)

In this case the Supreme Court had ruled that burden of proof as to cheque issued is not for legal debt is always on accused and the complainant is not required to adduce number of witnesses and bulk of documentary evidence. It is not for the complainant to prove that cheques have been issued in discharge of legally enforceable debt.

Contd.

- ❖ **Re: Signing and handing over cheque enough for attracting presumption.**

In the case of Bir Singh Vs. Mukesh Kumar (2019 Cr LJ 3227 (SC))

In this case the Supreme Court held that even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Act, in the absence of any cogent evidence to show that cheque was not issued in discharge of debt.

- ❖ **Re: Preponderance of Probability**

In case of Kamala S. vs. Vidyadharan M.J (2007 (2) Supreme 611)

It was held by the Supreme Court that the standard of proof in discharge of the burden in terms of Section 139 of the act being preponderance of probability, the inference therefore can be drawn not only from materials brought on record by also from the reference to the circumstances upon which the accused relies upon.

Contd.

- ❖ **Re: Presumption extends only to issuance of cheque.**

In case of Shrimathi vs. Renuka (2010 Cri LJ 372 (Kar))

It was held that the presumption under Section 139 extends only to the issuing of cheque towards discharge of legally enforceable debt or liability and it has to be raised only after the complainant establishes that such debt or liability in fact existed as on the date of the cheque in question and that the cheque was given by the accused.

- ❖ **Re: Plea of rebuttal in mismatch of signature.**

In the case of Laxmi Dyechem vs. State of Gujarat (2013 Cr LJ 3288 (SC))

It was held that if the cheque in question was returned due to mismatching of signatures and the petitioner neither raised the rebuttal plea nor proved to contrary that cheques were not for discharge of lawful debt, the plea of rebuttal envisaged under Section 139 would not be attracted.

Contd.

- ❖ **Re: Accused need not examine himself.**

In case of Krishna Janardhan Bat vs. Dattatraya G. Hegde (AIR 2008 SC 1325):

The Supreme Court has held that an accused for discharging the burden of proof placed upon him need not examine himself. He may discharge his burden on the basis of materials already brought on record.

- ❖ **Re: Different handwriting on cheque would not invalidate presumption**

In case of Monali Malik vs. Rekha Khanna (AIR 2013 (NOC) 132 (Del)

It was held that different handwriting with respect of name of bank, date and amount filled up on two cheques would not invalidate cheques, in view of the presumption under Section 139 of the Act.

Contd.

- ❖ **Re: Obligation on Accused to prove existence of consideration.**

**In the case of Rohitbhai Jivanlal Patel vs. State of Gujarat
(2019 Cri LJ 2400 SC)**

The Supreme Court has held that on the aspects relating to preponderance of probabilities, the accused has to bring on record such facts and circumstances which may lead the court to conclude either that the consideration did not exist or that its non-existence.

- ❖ **Re: Duty to adduce evidence.**

**In the case of Bikram Kumar Jena vs. Deepak Kumar Mohapatra
(2017 Cri LJ 1752 (Ori))**

It was held that in case under Section 138, it is the duty of the defence to adduce evidence keeping in view the provision under Section 139 of the said Act.

Section 140

Defense which may not be allowed in any prosecution under Section 138

- ❖ Section 140 of the Negotiable instruments Act 1881 states the defense which may not be permitted or allowed or valid in any prosecution under section 138 of the negotiable Instruments Act 1881.
- ❖ This section simply means that a drawer of a cheque has knowledge of his account and therefore he cannot take a defence in a trial under section 138 of Negotiable Instrument Act that he had no reason to believe when he issued the cheque that it will be dishonoured.

Cases under section-140

❖ **Re: Exclusion of Mens Rea**

In the case of Mayuri Pulse Mills vs. Union of India (1995 AIHC 5588)

It was held that Section 140 in clear terms excludes the defence that the drawer had no reason to believe, when he issued the cheque, that it may be dishonoured on presentment. The exclusion of mens rea under Section 138 is clear and explicit.

❖ **Re: Defence of not having subsisting account.**

In the case of Vathsan (V.) vs. Japahari (K.K) (2004 Cri LJ 414 (Ker))

It was held that once a person had issued a cheque drawn on an account which he was holding in the bank, necessarily, he cannot take up a defence that he did not have a subsisting account on the date of issuance of the cheque.

Section 141

Offences by companies

- ❖ It is stated in sub section (1) of section 141 that if a company commits offence under section 138 then every person who was in charge of the day to day affairs of the company at the time when the offence was committed shall be deemed to be guilty of the offence along with the company and shall be liable to be proceeded against and punished accordingly.
- ❖ Exception to this subsection are as follows:
 - (a) No individual or a person shall be held liable if that individual is able to prove the fact that the offence was committed without his knowledge on his part and all the reasonable and necessary steps were taken by him that a prudent man would have taken to prevent the happening of the offence.
 - (b) that in the case of a government company (state or central) a person who is nominated as a director by virtue of his holding any office shall not be liable for prosecution. Even otherwise a nominated director by Government on the board of any company shall not be liable for prosecution.

Contd...

- ❖ It is stated in sub section (2) of section 141 that notwithstanding any thing contained in sub section (1) where an offence has been committed by the company under this Act and it is proved that the offence has been committed with the consent or connivance of the director, partner or that the offence has been committed due to the negligence on their part then all such directors/ partners shall be deemed guilty along with the company.

Cases under section- 141

❖ **Re: Arraignment of Company as accused**

In the case of Himanshu vs. Shivamurthy (B) (AIR 2019 SC 3052)

It was held that the provisions of Section 141 postulates that if the offence under Section 138 is committed by the company, then every person at the time of offence, was in charge of or was responsible for the conduct of the business of company shall be deemed to be guilty and proceeded further. However, in absence of the company arraigned as accused, the complaint under Section 138 would not be held maintainable.

❖ **Re: Categories of person liable**

In the case of Anil Hada vs. Indian Acrylic Ltd. (2000 Cri LJ 373 (SC))

It was held that there are 3 categories of person who are brought within the penal liability:

- 1) The company, the principal offender
- 2) Everyone who was in charge and responsible for the business
- 3) Any other person who is a director or a manager, secretary or officer of the company, with whose neglect the offence is committed.

Contd.

- ❖ **Re: Winding up of company cannot come to rescue.**

In the case of Arjun Dev Nagpal vs. MP State Industrial Development Corp. Ltd. (2013 BC 466 (471) (MP))

It was held that a company cannot escape from penal liability under Section 138 of the act on the premise that a petition for winding up of the company was presented prior to the company being called upon by a notice to pay the amount of the cheque.

- ❖ **Re: Sole Proprietorship does not fall in the ambit of this Section**

In the case of MM Lal vs. State (NCT of Delhi) II (2013 BC 108 (Del))

It was held that a sole proprietorship firm would not fall within the ambit and scope of the provisions of Section 141 of the Act.

Contd.

❖ **Re: Person in charge of affairs of Sole Proprietorship cannot be held liable**

In the case of Bala Raju (V.) vs. Pashak Feeds Pvt. Ltd. (2005 Cri LJ 1129 (AP))

It was held that by invoking Section 141 of the Act, a person who is not either the drawer of the dishonoured cheque, or the proprietor but is in charge of the day-to-day affairs of a sole proprietary concern, cannot be made liable for an offence under Section 138 of the Act.

❖ **Re: Body Corporate will be company**

In the case of Abraham Memorial Education Trust vs. CS Babu II (2013 BC 133 (155) (Mad))

It was held that any person who falls under the ordinary natural meaning of the expression “body corporate” will be undoubtedly a company.

Contd.

- ❖ **Re: Prosecution of Non- Banking Finance Companies is not prohibited.**

In the case of Prudential Capital Mkt. Ltd. vs. State (2000 102 Comp Cas 442 (SC))

It was held that in case of non-banking financial companies, there is no provision under the Reserve Bank of India Act which prohibits any criminal proceedings to be continued.

- ❖ **Re: Allegations against directors are necessary**

In the case of A.K Singhania vs. Gujarat State Fertilizer Co. Ltd. (AIR 2014 SC 71)

It was held that in case of offence by company and to bring its directors within the scope of the section 138 of the Act, it shall be necessary to allege that they were in charge of and responsible to the conduct of the business of the company. It is necessary ingredients which would be sufficient to proceed against such directors

Contd.

❖ **Re: Managing Director alone cannot be prosecuted**

In the case of Anil Gupta vs. Star India Pvt. Ltd. (2014 Cr. LJ 3884)

It was held that in case proceedings were initiated against the company and its managing director. The Managing Director of the company cannot be prosecuted alone. Since complaint against company was already quashed, the managing director of the company cannot be continued to be prosecuted in absence of the company.

Contd.

- ❖ **Re: Presumption as to directors who are in-charge of the company**

In the case of N. Rangachari vs. Bharat Sanchar Nigam Ltd. (2007 (5) SCC 108)

It was held by the Supreme Court that a person in the commercial world having transaction with a company is entitled to presume that the Directors of the company are in charge of the affairs of the company.

- ❖ **Re: Includes all body corporates and association of individuals.**

In the case of Seetharam Reddy (K) vs. Radhika Rani (K.) (2002 112 Comp Cas 204 (AP))

It was held Section 141 has a comprehensive definition and covers all business organization such as companies under Companies Act, which includes all companies incorporated in India or abroad, foreign body corporates, public financial institutions, nationalized banks, co-operative societies and association of individuals will include club, trust, HUF etc. It shall be construed ejusdem generis along with other expressions 'company' or 'firm'.

Contd.

- ❖ **Re: Time of commission of offence**

In the case of Lata Pramod Dave vs. Mode Export Pvt. Ltd. (2016 198 Comp Cas 433 (Bom))

It was held that the commission of offence consists of various acts and constituents, such as disputed transactions, issuance of cheque, dishonour of cheque and issuance of notice. The dates of all these acts are important and combination of all these acts, give rise to commission of offence. Therefore, to attract the liability of the director under Section 141 all these acts must be comprised at the time of commission of offence.

- ❖ **Re: Acquittal on non-incorporation of particulars**

In the case of Linda John Abraham vs. Business India Group Co. II (2012 BC 457 (Ker))

It was held that an accused would be entitled to acquittal where neither particulars required under Section 141 of the Act were incorporated in complaint nor there was any averment in it regarding his responsibilities in the company for conduct of its business.

Contd.

- ❖ **Re: Section 141 provides for vicarious liability.**

In the case of Mohan Krishna (B) vs. Union of India (1996 Cri LJ 636 (AP))

It was held that provisions of Section 141 providing for criminal vicarious liability and having enough safeguard protecting right of person sought to be made vicariously liable is valid and does not suffer from any vice.

- ❖ **Re: Prosecution of Firm**

In the case of Sheeba (2006 132 Comp Cas 313 (Ker))

It was held that in view of explanation to Section 141 of the Act, when the offence is alleged to have committed by a firm, every person who at the time the offence was committed was in charge of and was responsible to the firm for the conduct of its business as well as the firm shall be deemed to be guilty of the offence.

Contd.

- ❖ **Re: Every partner of the firm cannot be prosecuted**

In the case of Associated Transport Co. vs. Murthy (PSR) (1994 80 Comp Cas 218 (Cal))

It was held that where some cheques were issued by a partner on behalf of the firm, the other partners could not be prosecuted in the absence of any averment in the complaint that the offence had been committed with the consent or connivance of, or was attributable to any neglect on the part of such partner.

- ❖ **Re: Sleeping partner cannot be prosecuted.**

In the case of Shakti Bhakoo vs. Raj Lakshmi Mills (2002 Cri LJ 1994 (P&H))

It was held that Section 141 does not refer to each and every partner of the firm. The offence is confined only to the person in charge of and responsible of the firm or company. A sleeping partner could not be said to be a person in charge of and responsible to the company for the conduct of its business, therefore, no proceedings against such a person held valid and is liable to be quashed.

Contd.

❖ **Re: Joint Family Business**

**In the case of Dadasaheb Rawal Co-Op Bank of Dondaicha Ltd.
vs. Ramesh Jawrilal Jain (AIR 2009 (NOC) 127 (Bom))**

It was held that a joint family business must be deemed as a juristic person like company or firm. A plain reading of explanation appended to Section 141 is that it is inclusive of any body corporate or other association of individuals.

Contd.

❖ **Re: Trustees of a Trust**

In the case of K.P Shibu vs. State of Kerala (2019 215 Comp Cas 327 (Ker)

It was held that a trust is not a body corporate or an association of individuals as provided in explanation in Section 141 of the Act. A complaint was filed against trust as first accused and the trustees were made accused no. 2 to 6. The accused no. 2 to 6 had alone signed the cheque and since the trust had not signed the cheque, no successful prosecution against the trust could be sustained.

❖ **Re: Trust is not a juristic person like a company.**

In the case of Muthuramalingam (MV) v. Narayanaswamy (D) 1995 83 Comp Cas 77 (Mad)

It was held that the trust is not a juristic person like a company and does not have a separate legal entity. It can only act through its trustees. Where a trustee issued a cheque on behalf of trust and the cheque is dishonoured, the trustee is liable to be proceeded against.

Contd.

❖ **Re: Dishonour of cheque by a Society.**

**In the case of Mohd. Isaq. Gulsani vs. J. Rajamouli
(2001 105 Comp Cas 230 (AP))**

It was held that mere omission to array the society as an accused is not fatal since the liability of the president of the society is independent.

❖ **Re: Company changing name**

**In the case of C.L Muthiah vs. Power Soaps Pvt. Ltd.
(2010 (154) Comp Cas 137 (Mad))**

It was held that on a change of name of company, the company does not stand dissolved nor any new company comes into existence. It follows that after change of its name, if any legal proceedings is commenced or instituted by a company in its old name, it would be a case of mere misdescription and not a case of initiation of a proceedings by a person not in existence.

Section 142

Cognizance of offence

- ❖ Sub clause (a) of sub section (1) of section 142 it is provided that no court shall take notice of an offence unless a complaint is made in writing by the holder of the cheque under section 138 of this act.
- ❖ In sub clause (b) of sub section (1) of section 142 it is provided that a complaint should be made within 30 days from the date on which the cause of action has arisen. Exception to this section states that if the complainant satisfies the court that he had sufficient cause for not making a complaint within prescribed period then the court may take cognizance of such complaint after the said period of 30 days.
- ❖ In Sub clause (c) of sub section (1) of section 142 it is stated that the offence which is punishable under section 138 of Negotiable Instruments Act, 1881 shall be tried only by Metropolitan Magistrate or Judicial Magistrate of first class and not by any other inferior court.

Contd...

- ❖ If the cheque is delivered for collection through an account, the case will be tried by the court not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class within whose local jurisdiction the branch of the bank where the payee or holder in due course maintains the account is situated. [Section-142(2)(a)]
- ❖ If cheque presented for payment by payee or holder in due course otherwise through an account, in such a situation the case will be tried by the court not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class within whose local jurisdiction the branch of the drawee bank where the drawer of the cheque maintains the account is situated. [Section 142(2)(b)]

Cases under Section 142

❖ **Re: Cognizance of Offence.**

In case of Kody Elecot Ltd. Vs. Downtown Hospital (1991) 71 Comp Cas 125 (Mad)

In this case it was held the cognizance of an offence can be taken under Section 138 upon a complaint in writing which must be made within 1 month by the payee or holder in due course.

❖ **Re: Service of Notice**

In case of Rajiv Kumar vs. State of U.P (1993 78 Comp Cas 507 (All))

It was held that in absence of proof of the service of the notice of demand as required under Section 138 the prosecution of the drawer is not permissible.

Contd.

❖ **Re: Section 200 of CRPC would continue to be in force**

In the case of Maharaja Developers Vs. Udaysingh Pratapsinghrao Bhonsle (2007 Cri LJ 2207 (Bom))

It was held that in Section 142 does not relieve the Magistrate of his duty to examine the complainant and his witnesses on oath under Section 200 of CRPC. Thus, the provisions of Section 200 would continue to control the inquiry or trial of an offence under Section 138.

Contd.

❖ **Re: Power of Court**

In the case of Yogendra Pratap Singh vs. Savitri Pandey II (2012 BC 520 (SC))

In this case it was held that under Section 142(1)(c) of the Act no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class is competent to try any offence punishable under Section 138 of the Act.

❖ **Re: Power of Attorney Holder**

In the case of Lalji Chaubey(Lt. Col) vs. State of U.P I (2013 BC 89 All)

It was held that according to provisions in Section 142 of the act a complaint can be filed by the payee himself or by the holder in due course or the holder of the power of attorney. It does not lay down the complaint must be filed by the payee personally.

Contd.

❖ **Re: Power to give more severe punishment**

In the case of Stalion Shox Co. (P) Ltd. vs. Auto Tensions (P) Ltd. (1994) 79 Comp Cas 808 (Del)

It was held that under Section 325(1) of the Code of Criminal Procedure whenever a Magistrate is of opinion that the accused is guilty and that he ought to receive a punishment more severe than he is empowered to give, he may record his opinion and forward the accused to Chief Metropolitan Magistrate to whom he is sub ordinate.

❖ **Re: Section 5 of the Limitation Act stands excluded**

In the case of Agricultural Market Committee vs. Sri Sankar Rao and Co. (2004 Cri LJ 1291 (AP)

In this case the Andhra High Court held that Section 142(1)(b) of the act places a complete bar on taking cognizance of an offence, except where it is made within one month from the date on which cause of action arises. It is held that the application of Section 5 limitation act stands excluded.

Contd.

❖ **Re: Complaint filed by Advocate**

In the case of Hotline Shares and Securities vs. Dinesh Ganeshmal

(2003 113 Comp Cas 28) (Kar)

In this case it was held that the complaint presented by the advocate is not a bar. It is proper presentation of complaint.

The complaint is not liable to be quashed on that ground itself.

Contd.

- ❖ **Re: Complaint sent by post.**

In the case of State of MP vs. Mathur (S.P) (1970 Cri LJ 922)

It was held by the division bench of Madhya Pradesh High Court that it would not be proper to dismiss the complaint sent by post on the ground that it was not validly presented. Even when the complaint is sent through post, the same can be received by the court and the court can act on it.

- ❖ **Re: Magistrate cannot refer the complaint to police for investigation**

In the case of Jagarlamudi Durga Prasad vs. State of Andhra Pradesh (1992 Cri LJ 597 (AP))

It was held that once the complaint is filed by payee or holder, the Magistrate has necessarily to take cognizance if the other ingredients are satisfied. He has no right or power to refer it for investigation to the police just like a private complaint.

Validation for transfer of pending cases

- ❖ Section 142A was inserted through Negotiable Instruments (Amendment) Act, 2015 for the validation for transfer of pending cases.
- ❖ The amendment has tried to settle the controversy regarding the jurisdiction of filing criminal complaints at multiplicity of places.
- ❖ Innumerable complaints would be pending at places other than the territorial jurisdiction, these complaints will be needed to be transferred to different places as per the territorial jurisdiction.

Power of court to try cases summarily

- ❖ Section 143 is inserted by the Negotiable Instruments (Amendment and miscellaneous provisions) Act, 2002 state that the trial in a case filed under Section 138 shall be tried in summary manner.
- ❖ It state that all the offences must be tried by Judicial Magistrate of first class or by a Metropolitan Magistrate.
- ❖ The provision of Section 262 to 265 of Code of Criminal Procedure,1973 must be followed as far as they are applicable while trying these cases.
- ❖ This section empowers magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine not exceeding five thousand rupees.
- ❖ Under this provision the magistrate is expected to conduct the trial on day to day basis until its conclusion unless the court finds the adjournment necessary for the reasons to be recorded in writing.
- ❖ Every trial under this section shall be concluded within six months from the date of filing of the complaint.

Cases under Section-143

- ❖ *Meters and Instruments (P) Ltd Vs. Kanchan Mehta, (2018) 1 SCC 560.*

The Supreme Court held that where the cheque amount with interest and cost as assessed by the court is paid by a specified date, the court is entitled to close the proceedings in exercise of its power under section 143 of the Act read with Section 258 of CrPC.

Contd.

❖ **Re: Cases are to be tried summarily**

In the case of Steel Tubes of India vs. Steel Authority of India (2006 Cri LJ 1988 (MP))

It was held that there is no room of doubt that for the purposes of trial of an offence falling under the act, provisions of summary trial Sections 262 to 265 of the code would be applicable and the trial cannot be converted into the warrant trial.

Contd.

❖ **Re: Recording of Reasons:**

In the case of Jaikishan Kanjiwani vs. Kumar Matching Centre (2011 Cri LJ 134 (Bom))

In this case it was held that if there exist circumstances which calls for continuance of trial in regular manner and it is obligatory upon him to recall witness, in such circumstances, with a view of assess desirability of the trial of a case which was initially being tried in a summary manner after recording of reasons may be tried in a regular manner.

❖ **Re: Re-recording of evidence**

In the case of Pratibha Pandurang Salvi Vs. State (2010 Cri LJ 730 (Bom))

It was held that the Judge who records the evidence shall deliver the judgement. Section 326(3) of the code has not been made applicable to summary trials. Hence the judge who is trying the case has to complete the case himself and if it remains incomplete then the successor has to again record the evidence and complete the trial.

Contd.

❖ **Re: Power to sentence and fine**

**In the case of Vijayan (R) vs. Baby
(AIR 2012 SC 528)**

In this case it was held that the Judicial Magistrate of First Class may pass sentence of fine exceeding Rs. 5000/-.

Section 143A

Interim Compensation

- ❖ This provision was inserted by Negotiable Instruments Amendment Act, 2018 w.e.f 01/09/2018
- ❖ Section 143 A empowers the court trying an offence under section 138, to order the drawer of the cheque to pay interim compensation to the complainant which shall not be more than 20% of the amount of the cheque.
- ❖ Such interim compensation has to be paid within 60 days, further extendable by 30 days, from the date of the order directing such compensation. Such compensation may be recovered as a fine under Section 421 of CrPC.
- ❖ If the drawer of the cheque is acquitted the complainant has to repay the amount of such compensation, along with the interest at bank rate as published by RBI, within 60 days, further extendable by 30 days, from the date of acquittal order.

Cases under Section 143A

- ❖ **Re: Provisions under this Section to be prospective.**

**In the case of G.J Raja vs. Tejraj Surana
(AIR 2019 SC 3817)**

It was held that the provisions of Section 143A can be applied or invoked only in cases where the offence under Section 138 was committed after the introduction of Section 143A.

Section 144

Mode of service of summon

- ❖ Under section 144 a magistrate issuing a summons to an accused or a witness may direct a copy of summons to be served at the place where such accused or witness ordinarily resides or carries on business or personally works for gain, by speed post or by such courier services as are approved by a Court of Session.
- ❖ Where an acknowledgement purporting to be signed by the accused or the witness or an endorsement purported to be made by any person authorized by the postal department or the courier services that the accused or the witness refused to take delivery of summon has been received, the court issuing the summons may declare that the summons has been duly served.

Cases on Section 144

❖ Re: Mode of Service

**In the case of Rajesh Agarwal vs State
(2010 (171) DLT 51 (Del))**

In this case it was held that the service of the summons can be effected through registered post/speed post or by courier. If the service is not effected by the said means the service by affixation is a valid service under criminal law.

Section 145

Evidence on affidavit

- ❖ Section 145 was inserted by amendment in the year 2002 for early disposal of cases relating to dishonour of cheques.
- ❖ Sub section (1) of Section 145 gives complete freedom to the complainant either to give his evidence by way of affidavit or by way of oral evidence. If such affidavit is given then the same must be accepted and should be kept on the record by the court. It further provides that such evidence given by way of affidavit may be read in evidence in any enquiry, trial or other proceedings.
- ❖ Sub section (2) of Section 145 states that the court has to call the witness whose affidavit in examination-in-chief is filed for the cross examination by the rival party when an application under this sub section is made.

Cases on Section 145

- ❖ **Re: Evidence to be given on affidavit.**

**In the case of KSL & Industries Ltd. vs. Mannalal Khandelwal
(2005 Cri LJ 1201 (Bom))**

It was held that under Section 145 of the Act, the evidence of the complainant can be given on affidavit, and thereafter, if the accused so desires, he/she may request the Court to call the complainant for cross examination.

However, Sub Section (1) of Section 145 gives freedom to complainant to give oral evidence.

- ❖ **Re: Re-examination can be permitted.**

In the case of Indo-International Ltd. Chennai (2006 Cri LJ 208 (Bom))

It was held that after the completion of cross examination, the Court will have to permit re-examination, if necessary, in accordance with the law of evidence.

Contd.

- ❖ **Re: Evidence on affidavit not fatal for taking cognizance.**

In the case of Manmohan Singh vs. Ankur Enterprise S.B (Crl. Misc. Petition No. 367/2011 (Raj.)

In this case it was held that the examination of the complainant as per Section 200 cannot be insisted upon and it cannot be said that the accused is left remediless and the Section 145(2) adequately safeguards the accused and therefore non examination of the complainant under Section 200 of CRPC before taking cognizance under Section 138 cannot be said to be fatal for taking cognizance by the Magistrate.

- ❖ **Re: Objection raised regarding proof of documents**

In the case of Geeta Marine Services Pvt. Ltd. vs. State (AIR 2009 (NOC) 951 (Bom).

It was held that after filing of affidavit of evidence, an objection raised regarding proof of documents has to be dealt immediately by the Magistrate before proceeding with the recording of cross-examination.

Contd.

- ❖ **Re: Purpose of Section 145 is to expedite trial**

In the case of Indraprastha Holdings Ltd. vs. Vijay J. Shah (2006 (Cri LJ 574 (Bom))

It was held that closer scrutiny of Section 145 shows that the same is intended to ensure that the trial is concluded as expeditiously as possible. The said provision does not in any manner affect the right of the accused to cross examine the complainant and witnesses. The said provisions enable the accused also to lead evidence on affidavits.

- ❖ **Re: Section 145 have overriding effect.**

In the case of Rakesh Sharma vs. State of Rajasthan (2010 Cri LJ (NOC) 1083 (Raj))

It was held that the provisions of Section 145 is having overriding effect over the provisions of the CRPC. When the specific stages like enquiry, trial or other proceedings for taking complainant's evidence by affidavit has been given, then the provisions contrary in CRPC cannot override Section 145 of the Act.

Contd.

- ❖ **Re: Complainant not required to be examined twice.**
In the case of Rajesh Agarwal vs. State (2010 (171) DLT 151 (Del)

It was held that the evidence of the complainant given on affidavit shall be read in evidence and hence the complainant is not required to examine himself twice i.e one after complaint and one after summoning of accused. The affidavit and documents filed are good enough to be read in evidence.

- ❖ **Re: Section does not violates right to fair trial**
In the case of Abdul Aziz Lokhandwala vs. Nasir Ali
(2010 Cri LJ 1981 (Bom)

It was held that when a separate procedure is provided under the Negotiable Instruments Act for speedy disposal it cannot be said the accused is denied a fair opportunity to defend his case. It cannot be said that the fundamental rights of the accused are violated in any manner.

Bank's slip prima facie evidence of certain facts

- ❖ Under section 146 the court shall presume the fact of dishonour and such cheque on the production of bank slip or memo having thereon the official marking denoting that the cheque has been dishonoured unless and until such fact is disproved.

Section 147

Offences to be compounded

- ❖ Section 147 was inserted by Negotiable Instrument (Amendment & Miscellaneous Provisions) Act, 2002.
- ❖ Compoundable offence means offences where, the complainant enter into a compromise, and agrees to have the charges dropped against the accused.
- ❖ The offences punishable under section 138 has been made compoundable and it does not provide for any other or further qualification or embargo.

Contd...

- ❖ Generally there are two types of compoundable offences under section 320 (1) and (2) of CrPC i.e. minor and serious offence. In case of serious offence compounding is allowed by the victim only with the permission of the court.
- ❖ In case of offence under section 138 of Negotiable Act, the legislature thought it fit to permit compounding without the leave of the court as generally dishonour of cheque arises out of commercial transaction between private parties.

Cases under Section 147

- ❖ **Re: No formal permission for compounding is to be sought**

In the case of Rameshbhai Somabhai Patel vs. Dineshbhai Achalanad Rathi (2005 Cr. LJ 431) (Guj)

It was held that the offences under Section 138 of the Act are made compoundable. The parties can compound the offence as the offence is compoundable. No formal permission to compound the offence is required to be sought for as described under Section 320(1) of CRPC.

- ❖ **Re: No express prohibition against compounding**

In the case of Rangaswamiaiah (M) vs. Shettappa (R) (2002 Cri LJ 4792)

It was held that in the present CRPC, there is no express prohibition against compounding of an offence under any other laws, in the absence of such provisions in the present code and where the NI Act itself is silent, such offence could be compounded.

Contd...

- ❖ **Re: Settlement can be done at the stage of appeal also**

In the case of Cranex Ltd. vs. Nagarjuna Finance Ltd. (2000 Cri LJ 4673 (SC))

In this case there was compromise or settlement between the parties during the pendency of appeal in sessions court against conviction and sentence of imprisonment and fine under Section 138 of the Act, the Supreme Court held that during the pendency of the appeal the settlement can be taken into account.

- ❖ **Re: Drawer paid entire amount during appeal**

In the case of Mohan Babu (P) vs. Ramasway (D) (2000 Cri LJ 4671)

It was held that during the pendency of the appeal before the Supreme Court, the drawer paying the entire amount covered by the disputed cheques and affidavit filed before the Supreme Court to the said effect, the apex court has held that it would be a mitigating factor.

Contd.

- ❖ **Re: Conviction set aside in lieu of payment**

- In the case of Op. Dholakia (2000 1 SCC 762)**

- The Supreme Court granted permission to compound the conviction and sentence wherein the complainant had no objection if the conviction was set aside as he has received entire amount and further negated the contention of the State that the compromise could have been done during the pendency of appeal and not at this stage.

- ❖ **Ref: Section 147 is non obstante clause**

- In the case of K.M Ibrahim vs. K. P Mohammed (AIR 2010 SC 276)**

- The apex court in this case held that the compounding offence at later stages of litigation is been held permissible and it has been noted that non-obstante clause included in Section 147 of the 1881 act being a special statute, the provisions of Section 147 shall have overriding effect over the provisions of CRPC.

Section 148

Payment pending appeal against conviction

- ❖ Section 148 has been inserted by the Negotiable Instruments (Amendment) Act, 2018.
- ❖ It is stated that a drawer of cheque who is convicted under Section 138, may file an appeal against his conviction.
- ❖ By the provision of Section 148 the appellate court can order him to deposit such sum which shall be at least 20% of the compensation or fine awarded by the trial court.
- ❖ The said amount is payable in addition to any interim compensation paid under Section 143-A.
- ❖ The court can release such amount to the complainant at any time during the pendency of the appeal.
- ❖ In the case of the appellant's acquittal, the complainant has to repay the amount to him in the same manner as mentioned under 'interim compensation to the complainant'.

Cases under Section-148

❖ Ref: Object of the Section 148

In the case of Surinder Singh Deswal vs. Virender Gandhi (2019 Cr LJ 3507 (SC))

It was held that when the appeals are filed against the conviction and considering the object and purpose of amendments in Section 148, while suspending the sentence, the appellate court directed the appellants to deposit 25% of the amount can be said to be absolutely in consonance with object of the Act. Because of delay tactics of drawers due to easy filing of appeals and obtaining stay on proceedings, the objective of Section 138 was frustrated and hence this Section was introduced.